IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

CUSTOMS APPEAL NO.2 OF 2004

Commissioner of Customs (Imports)
New Customs House, Ballard Estate,
Mumbai-400 038. .. Appellant

v/s.

1. M/s.Patvolk
(Division of Forbes Gokak Ltd.)
19, J.N.Heredia Marg,
Ballard Estate,
Mumbai-400 001.

2. M/s.Shahi Containers
(Division of Shahi Shipping Ltd.)
306, Vyapar Bhavan,
P.D'Mello Road,
Mumbai-400 009. .. Respondents

Mr.A.S.Rao with Mr.Y.R.Mishra i/by Dr.T.C.Kaushik for appellant.

Mr.Madhur Baya for the respondents.

CORAM : R.M. LODHA &
J.P.DEVADHAR, JJ.

DATED : 5TH APRIL, 2006.

ORAL JUDGMENT (Per R.M.Lodha, J.)

On 16.6.2005, the Division Bench admitted this appeal on the following substantial question of law:-

> "Whether the corrigendum dated 11.2.93 issued by the Assistant Commissioner of Customs to correct a typographical error in the grade number of the goods mentioned in the less charge demand notice dated 5.1.93, which was legal and well within the period of six months as prescribed under section 28 of the Customs Act, 1962, ought to have been issued by the Commissioner instead of Assistant Commissioner?

2. Mr.A.S.Rao, counsel for the revenue submits that the aforesaid question does not relate to the present appeal at all. The question that arises in the present appeal, according to him is: whether the `person in charge' as defined in section 2(31) of the Customs Act, 1962 is the person responsible for any commission of omission in challenging the import manifest alone or his agent is also responsible.

3. The counsel for the revenue is right in submitting that the question framed on 16.6.2005 does not relate to the appeal. We, accordingly, reframe the following substantial question of law for decision in the appeal.

> Whether the `person in charge' as defined in section 2(31) of the Customs Act, 1962 (and since the present matter relates to the vessel, the master of the vessel) is the person responsible in respect of commission or omission in filing the import

manifest alone or his agents (steamer agent and slot charterer) having filed the import manifest on his behalf is responsible by virtue of sections 30 and 148(2) of the Customs Act, 1962?

4. The aforesaid question arises from the following relevant facts:

(i) On 19th April, 1998, the vessel m.v. Kedah arrived at Mumbai port carrying Propelyene Glycol weighing 51.6 metric tonnes covered under 12 bills of lading in three containers.

(ii) The Import General Manifest (IGM) was filed for three bills of lading of cargo wherein 12.9 metric tonnes were manifested. The rest of the goods were not manifested.

(iii) On the basis of inaccurate IGM, the manifested as well as unmanifested cargo was offloaded.

(iv) M/s.Patvolk (respondent No.2) is the steamer agent and M/s.Shahi Containers (respondent No.2) is the slot charterer for the master of vessel.

(v) On 23rd April, 1998, M/s.Shahi Containers (slot charterer) addressed a letter to the Assistant Commissioner of

Customs informing that by mistake IGM was filed in respect of three bills of lading instead of 12 bills of lading and requested for amendment in IGM incorporating 12 bills of lading.

(vi) On 24th April, 1998, M/s.Patvolk (steamer agent) addressed a letter to the Assistant Commissioner of Customs intimating them with reference to the letter dated 23.4.1998 sent by Shahi Containers that they (Patvolk) were the vessel agent and waive the show-cause notice and that the matter be proceeded and penalty amount be advised so that M/s.Shahi Containers could make payment thereof.

(v) By the communication dated 30th April, 1998, M/s.Shahi Containers informed the Assistant Commissioner of Customs that they have been explained the charges and that they do not want any show cause notice but may be heard. Similarly, M/s.Patvolk by their communication dated 30th April, 1998 informed the Assistant Commissioner of Customs that they have been explained the charges and they do not want any show cause notice.

(vi) The Assistant Commissioner of Customs, accordingly, heard M/s.Shahi Containers and M/s.Patvolk (both of whom were representing master of vessel) and by the order dated 4th May, 1998 directed confiscation of unmanifested goods totally weighing

38.7 metric tonnes under section 111(f) and (g) of the Customs Act, 1962 for contravention of the provisions of sections 32 and 34 and offered redemption of the goods on payment of redemption fine of Rs.1.8 lakhs and imposed penalty of Rs.20,000/- on M/s.Shahi Containers and Rs.10,000/- on M/s.Patvolk under the provisions of section 112 of the said Act.

(vii) M/s.Patvolk and M/s.Shahi Containers preferred two separate appeals against the order in original dated 4.5.1998 to the extent the penalty was imposed upon them.

(viii) The Customs Excise & Service tax Appellate Tribunal, West Regional Bench, Mumbai (for short, `the Tribunal') heard the two appeals together and by the common order dated 12.9.2003 set aside the order dated 4.5.1998 by holding that neither the slot charterer nor the steamer agent is liable to penalty for failing to file the full and correct manifest for the goods.

5. The revenue has come up in appeal dissatisfied with the order dated 12.9.2003 passed by the Tribunal.

6. Paragraph 3 is the only discussion in the impugned order. It reads thus-

“3. The adjudicating authority has imposed a

> penalty on M/s.Shahi Containers holding that the responsibility for filing full and correct manifest lies upon the steamer agent, slot charter and the cargo forwarders. This is the same reason he has adopted for imposing penalty on M/s.Patvolk. However, in the face of the clear language of Section 2(31) of the Customs Act, 1962 defining the person in charge of conveyance in relation to a vessel as the master of the vessel, I hold neither the slot charter in nor the steamer agent can be held liable to penalty for failing to file the full and correct manifest for the goods."

7. It would be, thus, seen that the Tribunal applied section 2 (31) of the Customs Act, 1962 that defines `person in charge' and held that since in relation to a vessel m.v. Kedah the person in charge is a master of vessel, the slot charterer or steamer agent cannot be held liable.

8. In our view, the Tribunal manifestly erred in holding so. The Tribunal failed to consider the two relevant sections viz. Section 30 and section 148 of the Customs Act, 1962 and also overlooked and ignored the material facts, particularly the stand of M/s.Patvolk before the Assistant Commissioner of Customs that they were the vessel agent of m.v. Kedah; that IGM was filed by them on behalf of slot charterer (M/s.Shahi Containers) and that the application for amendment in IGM was filed by M/s.Shahi Containers on 23.4.1998. Both of them (M/s.Shahi Containers and M/s.Patvolk) waived the show cause notice having understood the charge against them. M/s.Patvolk even wanted Assistant

Commissioner of Customs to advise them so that the penalty amount could be paid by M/s.Shahi Containers.

9. Section 2(31) defines the person in charge which means in relation to a vessel, the master of the vessel.

10. Section 30 provides that the person in charge of a vessel carrying imported goods or any other person as may be specified by the Central Government, by notification in the Official Gazette, in this behalf, shall deliver to the proper officer an import manifest prior to the arrival of the vessel. The person delivering the import manifest has to make and subscribe to a declaration as to the truth of its contents. It further provides that if the proper officer is satisfied that the import manifest is incorrect or incomplete and there was no fraudulent intention then the import manifest be permitted to be amended or supplemented.

11. Section 32 debars unloading of the imported goods unless they are specified in the import manifest.

12. As per section 34, the imported goods shall not be unloaded except under the supervision of the proper officer.

13. Section 111 interalia, provides for confiscation of the goods which have not been mentioned in an import manifest as required

under the regulations and which are unloaded in contravention of the provisions of section 32. Penalty for improper importation of goods is provided in section 112. The penalty is imposable on the person in relation to the goods who omits to do any act which would render such goods liable to confiscation under section 111 or abets the doing for omission of such an act.

14. Section 116 provides for penalty for not accounting for goods.

15. Liability of an agent appointed by the person in charge of a conveyance is fastened under section 148. Sub-section (1) of Section 148 provides that anything that is required to be done by a person in charge of the conveyance may be done on his behalf by his agent. Under sub-section (2), an agent appointed by the person in charge of a conveyance and any person who represents himself to any officer of customs as an agent or any such person in charge and is accepted as such by that officer, is liable for discharge of all obligations imposed on such person in charge and the penalties and confiscations incurred in respect of the said matter.

16. The scheme of the Act is clearly reflected from the provisions that we referred to hereinabove that the imported goods which are required to be mentioned under the regulations

in the import manifest shall not be unloaded at any customs station unless they are specified in such manifest. Where it is found that the import manifest does not disclose the entire imported goods and that in the garb of inaccurate and incomplete import manifest, the unmanifested goods have been unloaded at a customs station, such goods being improperly imported become liable to confiscation under section 111. The import manifest is required to be delivered to the proper officer either by the person in charge of the vessel or any other person as may be specified by the Central Government by notification in the official gazette. Any person, who in relation to any goods does or omits to do any act which act or omission would render such goods liable to confiscation under section 111 or abets the doing or omission of such an act, is liable to penalty under section 112. By virtue of section 148(2), besides the person in charge of a conveyance, liability can be fastened upon his agent appointed under the Act or a person representing the person in charge who has been accepted as such by the concerned officer for the purpose of dealing with the cargo on his behalf.

17. That M/s.Patvolk and M/s.Shahi Containers do not fall within the definition of `person in charge' under section 2(31) of the Act is not in doubt. At the same time the fact that both of them represented to the officers of the Customs as the agent for master of the vessel for the purposes of dealing with the cargo also does

not seem to be in doubt. IGM was filed by M/s.Patvolk. Shahi Containers filed the application on 23.4.1998 for amendment in the IGM. On 24.4.1998, M/s.Patvolk with reference to the application for amendment made by M/s.Shahi Containers stated that they waived the show cause notice and that penalty may be determined and the said penalty would be paid by M/s.Shahi Containers. M/s.Shahi containers also waived the show cause notice and said that they may be heard before passing any order. These facts speak for themselves that M/s.Patvolk and M/s.Shahi Containers were representing the `person in charge' (master of vessel) to the customs authorities for the purposes of dealing with the cargo offloaded from the vessel. The Custom Authorities dealt with M/s.Patvolk and M/s.Shahi Containers as the representative of the person in charge. By virtue of section 148(2), for the failure on the part of the said representative in filing accurate and complete IGM, the goods became liable to be confiscated under section 111 and penalty could be imposed on the said representative under section 148(2) of the Act.

18. In the case of British Airways Plc. v. Union of India and others, (2002)2 SCC 95, the Supreme Court, on consideration of relevant sections viz. 2(13) and 148(2) of the Customs Act, in paragraph 9 of the judgment, held thus-

> “9. The scheme of the Act provides that the cargo

must be unloaded at the place of intended destination and it should not be short of the quantity. Where it is found that the cargo has not been unloaded at the requisite destination or the deficiencies are not accounted for to the satisfaction of the Authorities under the Act, the person-in-charge of the conveyance shall be liable in terms of Section 116 of the Act. Besides the person-in-charge of the conveyance, the liability could be fastened upon his agent appointed under the Act or a person representing the person-in-charge who has accepted as such by the officer concerned for the purposes of dealing with the cargo on his (person-in-charge's) behalf. Assuming that the appellants are neither the person-in-charge within the meaning of Section 2(31) of the Act nor his agent, it cannot be denied that they shall be deemed to be a person representing the person-in-charge to the officers of the Customs as his agent for the purposes of dealing with the cargo offloaded from the aircraft of the appellants' carrier."

19. In paragraph 13, the Supreme Court held thus-

"13. It may be noticed that sub-section (2) of Section 148 was enacted to give relief to the aircraft carrier and the officer-in-charge of a conveyance and permit him to leave with the conveyance by making his agent and person representing him responsible for all the penalties and confiscations. Accepting the submissions of the appellants in this context would defeat the purpose of incorporation of sub-section (2) of Section 148 of the Act and make the working of the Act impractical. Such an interpretation would be detrimental both to the carrier, the person-in-charge on the one hand and the Revenue and Customs Authorities under the Act, on the other. Insistence on ascertaining the liability under Section 116 of the Act before passing an order in terms of Section 42 would mean not permitting the conveyance to depart from the customs station unless its officers have minutely examined the whole case and determined the consequences for not accounting of goods. Such could not be the

intention of the legislature."

20. In the light of the aforesaid legal position laid down by the Supreme Court and the factual and legal position noticed by us, we find that the finding of the Tribunal that neither the slot charterer (M/s.Shahi Containers) nor the steamer agent (M/s.Patvolk) could be liable for penalty for failing to file the full and correct manifest for the goods is manifestly erroneous and unsustainable. M/s.Shahi Containers as well as M/s.Patvolk being representative of the master of vessel are responsible in respect of commission or omission in filing the import manifest for the entire cargo. We answer the question accordingly.

21. The result is that we would allow the appeal and set aside the order of the Tribunal dated 12.9.2003 and we order accordingly. No order as to costs.

(R.M.LODHA, J.)

(J.P.DEVADHAR, J.)